IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1055 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHESH CHHOTUBHAI VASAVA - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR KJ SHETHNA for Applicant(s) : 1,MR VIJAY H NANGESH for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/08/2007

ORAL JUDGMENT

By way of this application under Article 226 of the Constitution of India r/w 482 of Criminal Procedure Code, the petitioner, - original accused has prayed for an appropriate order to quash the FIR being C.R. No. I 86 of 2007 of Jhagadia Police Station, Dist: Bharuch.

2. Petitioner is the member of the legislative assembly from Dediyapada Constituency in the Gujarat Legislative Assembly. An FIR is registered against the petitioner in Jhagadia Police Station on 28-5-07 being C.R. No.86 of 2007 for the offences u/s 186, 504, 212 r/w section 216 of the IPC. That the said complaint is given by the Police Inspector, Valia Police Station. It is alleged and averred in the complaint/FIR that on 28-5-07 at about 0:25 a.m., the complainant PSI, Valia Police Station got pucca information that one Paresh Babubhai Vasava resident of Bilatha, Tal: Jhagadia and others, accused with him in C.R. No.65 of 2007 of Valia Police Station for the offences u/s 147, 148, 149, 323, 325, 302, 435 and 427 had hidden themselves in the house of the petitioner, who is the husband of the sister of abovenamed Pareshbhai. The information received by the complainant was that said Paresh had parked his Qualis Jeep No. GJ.16.AA 717 near

the house of the petitioner and was residing there. On the basis of the said information, the complainant and the raiding party including one DySP Ms Sujata Solanki, Police Inspector DD Damor of Jhagadia Police Station, Police Inspector VR Ganatra of Ankleshwar GIDC and other police officers made the entry in the Station Diary of Valiya Police station, they took panchas, who were also taken with the members of the raiding party and in Government vehicles they all went to the house of the petitioner. There they found that the information received by them that the abovementioned Qualis Jeep of abovenamed Pareshbhai was parked there is found true and therefore, they knocked the doors of the house of the petitioner for inquiring about the accused in the abovementioned C.R. No. 65 of 2007 of Valia Police Station. It is alleged in the FIR that the petitioner came near the doors of his residential premises and he made inquiries as to who were those persons who had come to his residential premises and knocked its doors. It is alleged that the petitioner was informed that they were the police who had come and the introduction of the complainant and his officers was given to the petitioner. The petitioner was also informed/told that they had come for inquiring about the accused Paresh Vasava on the basis of the information received by them and on the basis of the information

that said Pareshbhai had taken refuge in his house and on the basis of this information, inquiry was to be made in the house of the petitioner. It is alleged in the complaint that on listening to this, the petitioner got irritated and with loud voice he asked them"...You police with whose permission you have entered in to the compound? Have you got any permission or any warrant with you for making inquiry into my house? I will not open the doors. I will not permit you to inquire into my house. As, I am the MLA, you have no authority to inquire into my house. I will file police case against you. I am talking to the Home Minister." It is further alleged in the complaint that while petitioner was saying this, 2 to 3 persons from the rear portion of the premises of the petitioner ran away towards the sim of the village in the dark night. It is alleged that despite all the efforts made by the police, those persons who had run away could not be apprehended. It is alleged in the complaint that on the basis of the aforesaid circumstances, it was certain that those persons who had run away were Paresh Vasava and other co-accused and therefore, the Police Inspector, Valiya Police Station,-the complainant has filed the aforesaid complaint, which was registered initially with Valiya Police Station at 3:55 a.m. on 28-5-07 being zero number FIR and thereafter, the same was

transferred to Jhagadiya Police Station which was registered by the PSO, Jaghadiya Police Station at 5:30 a.m. on 28-5-07 being C.R. No. I 86 of 2007.

3. It is further alleged that the petitioner made false allegations against the police and knowingly and intentionally permitted those persons who were accused in serious offence to take shelter in his house and prevented the police from inquiry into his house and thus, obstructed the police from performing their lawful duty. He gave threats and made false allegations and knowingly gave an opportunity to those persons who were accused to run away. Thus, it is alleged that he has committed the offence u/s 186, 504, 212, 216 of the IPC. Being aggrieved by the same, the petitioner, - original accused has preferred the present application u/s 482 of Criminal Procedure Code to quash and set aside the aforesaid FIR.

4. Shri Shethna, learned advocate appearing on behalf of the petitioner has submitted that the impugned complaint is filed against the petitioner with mala fide intention with a view to harass the petitioner as the petitioner is the sitting MLA from Dediyapada and his father and members of all family are the members of the Janta Dal and he is elected on the ticket of Janta Dal and at the same time in the State

of Gujarat, BJP is getting majority and running the government of Gujarat and as the petitioner and his family members are not in good books of the BJP, the petitioner and his family members are harassed. It is submitted that after short time, the election to the Legislative Assembly of Gujarat will be held and because of this, the petitioner and his family members are again not in good books and that pressure was brought on them to secure their support and also the support of their family members and their supporters for the BJP. It is submitted by him that even Hon'ble Shri Amit Shah, State Home Minister of Gujarat on phone called the petitioner about two days before the day, namely 28-5-07 on which the complaint is given by Subhadra, wife of the petitioner. It is submitted that the pressure was brought on him by the Hon'ble Minister for giving support to the BJP and when the has said “No” and therefore, the threat was given to him by the said Minister. It is submitted that on 28-5-07 at mid night hours at about 2:00 to 2:30 a.m., wife of the petitioner Subhadra was in house and the petitioner was not there in the house, at that time, the police officer came there and told Subhadra that they want to search the house and as it was mid night and her husband was not inside the house, she asked them to come to the house after her husband returns and then to do whatever they want to do in his

presence and therefore, the police officer became angry and abused the petitioner's wife in the name of her mother and sister and therefore, the wife of the petitioner had filed the complaint before Jhagadia Police Station against the police officer, which was not accepted and thereafter, his wife had filed the private complaint in the Court of ld. JMFC, Jhagadia being criminal inquiry case No.17/07 against the police officers and others and the same was sent for inquiry u/s 202 of Criminal Procedure Code and as a counter blast, the present complaint has been filed, therefore, it is requested to quash the impugned FIR as the same is filed with mala fide intention and to harass the petitioner. Shri Shethna has submitted that allegations about the meeting with Hon'ble Minister Shri Amit Shah are not controverted by way of reply. It is further submitted that the story which is narrated in the FIR is fantastic to be true. It is also further submitted by him that the present complaint is a counter blast to the complaint filed by the wife of the petitioner. It is submitted that prima facie, no case of harbouring the other persons are made out. It is submitted that even as stated in the FIR, so many police officers were present and they could have arrested those accused persons. Thus, the story is not believable and the complaint is absolutely absurd. It is submitted

that the impugned complaint is filed to ruin the political career of the petitioner. It is submitted that in the affidavit-in-reply, there is no reply to the allegations of counter blast and other allegations.

5. Shri Shethna has heavily relied upon the decision of the learned Single Judge of this Court dated 4-7-97 passed in Criminal Misc. Application No.1683 and 1681 of 1994. Relying upon the aforesaid decision, it is submitted that in the facts and circumstances of the case and looking to the averments and allegations in the complaint, continuation of criminal proceedings against the petitioner would be abuse of process of Court and therefore, to prevent such abuse and to serve the ends of justice, it is requested to exercise the inherent powers u/s 482 of Criminal Procedure Code to quash the impugned FIR. It is submitted by Shri Shethna that as held by the learned Single Judge in the aforesaid decision that if it is found that the complaint is inherently improbable, then in such cases, the Court must without any hesitation exercise inherent powers to quash and bury the matter at the initial stage without waiting for the stage of examining evidence. It is further submitted that as held by the learned Single Judge even in a case, where apparently on face of record or manifestly the criminal proceedings are

influenced with mala fides or appear to have been in vengeance giving vent to political vendetta or private and personal grudge, the court shall not feel helpless to quash proceedings bearing in mind the basic principle that, taking the allegations to be true on its face value and that an offence is made out and the court should not intervene and interfere. Therefore, it is requested to quash the impugned complaint/FIR even at the initial stage, as the same has been filed in vengeance giving vent to political vendetta and with ulterior motive.

6. On the other hand, the petition is opposed by Shri KT Dave, ld. APP. It is submitted by him that when the present petition is filed, the same is at the initial stage of investigation and the averments in the complaint do constitute prima facie cognizable offence which requires further investigation. It is submitted by him that the allegations of mala fides are not required to be considered at this stage and/or the impugned complaint/FIR is not required to be quashed and set aside at the threshold on the basis of the allegations of mala fides and/or on the ground that the same is a counter blast to some other complaint. It is also further submitted by him that so far as the allegations against the Hon'ble Home Minister are concerned, he is not joined as

party to the present proceeding and in absence of him, the allegations of mala fides made against him are not required to be considered. It is also further submitted by him that the decision of the learned Single Judge relied upon by the petitioner is contrary to the decision of the Hon'ble Supreme Court in the case of **State of Orissa and another V. Saroj Kumar Sahoo reported in 2005(13) SCC 540** in which the Hon'ble Supreme Court held that on the ground of mala fides, the FIR is not required to be quashed and set aside in exercise of powers u/s 482 of Criminal Procedure Code. He has also relied upon the affidavit-in-reply filed by the Police Inspector of Jhagadia Police Station and it is submitted in the affidavit-in-reply that after lodging the impugned FIR, he has carried out the offence place panchnama on 28-5-07 and pursuant thereto, recorded the statement of 30 police personnels who were the members of the raiding party including Dy.S.P. Mrs. Sujata Solanki. It is also submitted in the reply that during the course of the investigation, he transmitted message to the Hon'ble Speaker of the Gujarat Legislative Assembly intimating the registration of the offence against the sitting MLA i.e. the petitioner. It is also further submitted that he has tried to trace out the present petitioner time and again but he could not be found at his residence. It is further

submitted that he has also recorded the statement of the brother of the petitioner as well as others and there are 11 offences found to be registered in the Jhagadia Police Station against the petitioner. It is also further submitted that so far as filing of the complaint by the wife of the petitioner before the ld. JMFC, Jhagadia is concerned, the said complaint is filed after the present complaint has been filed. It is also further submitted that even the order passed by the ld. JMFC for inquiry u/s 202 is challenged by way of Criminal Revision Application No.107/07 which is pending before the Revisional Court. Therefore, it is requested to dismiss the present application, as prima facie case is made out against the petitioner for further investigation and inquiry and that the petitioner is absconding and is not available for further investigation. Shri Dave has relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Orissa and another V. Saroj Kumar Sahoo reported in 2005(13) SCC 540** and in the case of **State of Karnataka and Anr. V. Pastor P. Raju reported in AIR 2006 SC 2825**.

7. Now, considering the allegations in the impugned FIR, it appears to the Court that they are serious in nature. When the police party raided the residence of the petitioner on a definate information that two accused persons

involved in serious offence were in the house of the petitioner, the petitioner interfered and obstructed the police authorities in performing their duty and deliberately entered into unnecessary scuffle and thereby facilitated those accused persons to run away. It is the contention of the petitioner that the impugned complaint is mala fide and to take a political vendetta as the petitioner and his family members are belonging to the party, other than the party in power and therefore, with a view to harass the petitioner, the impugned FIR has been filed and that the story in the FIR is so absurd and/or fantastic that no prudent person would accept it and therefore, it is requested to quash the complaint and for that purpose, the learned advocate appearing on behalf of the petitioner has relied upon unreported judgment of the learned Single Judge of this Court in the case of Kesarisinh Mojisinh Yadav and others (supra). Now, at the outset, it is to be noted that in the case before the learned Single Judge, the question was after completion of investigation and at the time of taking cognizance by the ld. Magistrate. In the present case, even the investigation has just begun and at that stage, the petitioner is before this Court and therefore, all the observations which are made by the learned Single Judge in the aforesaid decision are

required to be considered in the context and the stage and the proceeding before the ld. Magistrate. Even, in the said decision also, the learned Single Judge has observed that as a fundamental rule, powers under Section 482 of the Cr.PC for quashing proceedings at initial stage should be exercised very sparingly and in rare cases. It is also further observed by the learned Single Judge that ordinarily, criminal proceedings should be allowed to see its logical end on appreciation of evidence and therefore, any attempt to interfere under Section 482 of the Cr.PC at the initial stage would amount to scuttling the proceedings in its embryo without giving an opportunity to the parties to present their case on merits. Now observing the above, the learned Single Judge has further obsrved that if the allegations made in the F.I.R. or complaint, though prima facie constitute an offence, yet are so absurd and inherently improbable that on the basis of which no prudent person would have reached a just conclusion that there is sufficient ground for proceeding against the accused, then in such cases continuation of criminal proceedings would be abuse of process of court, therefore, to prevent such abuse and to serve the ends of justice, the courts must without any hesitation exercise inherent powers to quash and bury the matter at the initial stage without waiting for the stage of

examining evidence. Some of the observations which are referred to hereinabove are just contrary to the various decisions of the Hon'ble Supreme Court. At this stage, two decisions of the Hon'ble Supreme Court in the case of Saroj Kumar Sahoo (supra) and Pastor P. Raju (supra), are required to be referred to.

8. As held by the Hon'ble Supreme Court in the case of Saroj Kumar Sahoo (supra), the exercise of powers u/s 482 of Criminal Procedure Code is the exception and not the rule. While exercising powers u/s 482 of Criminal Procedure Code, the High Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is also further observed by the Hon'ble Supreme Court in the said decision that the inherent powers should not be exercised to stifle a legitimate prosecution. It is also observed by the Hon'ble Supreme Court that the High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are

of magnitude and cannot be seen in their true perspective without sufficient material. It is also further observed by the Hon'ble Supreme Court in the said decision that when exercising jurisdiction under section 482 of Criminal Procedure Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. It is also further observed that when an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the Court which decides the fate of the accused persons. The allegations of the mala fides against the informant are of no consequence and cannot be themselves be the basis for quashing the proceedings.

In the case of Pastor P. Raju (supra) in para 11, the Hon'ble Supreme Court has obsrved as under:

“There is another aspect of the matter which deserves notice. The FIR in the case was lodged on 15-1-05 and the petition u/s 482 of Criminal Procedure Code was filed within 12 days on 27-1-05 when the investigation had just commenced. The petition was allowed by the High

Court on 23-2-05 when the investigation was still under progress. No report as contemplated by section 173 Criminal Procedure Code had been submitted by the in charge of the police station concerned to the Magistrate empowered to take cognizance of the offence. Section 482 of Criminal Procedure Code saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any Court but the power cannot be exercised to interfere with the statutory powers of the police to conduct investigation in a cognizable offence. This question has been examined in detail in Union of India v. Prakash P. Hinduja & Anr. (2003) 6 SCC 195,where after referring to King Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 18, H.N. Rishbud & Inder Singh v. The State of Delhi AIR 1955 SC 196, State of West Bengal v. SN Bask AIR 1963 SC 447, Abhinandan Jha & Ors v. Dinesh Mishra AIR 1968 SC 117 and State of Bihar & Anr v. JAC Saldanha & Ors. (1980) 1 SCC 554, it was observed as under in para 20 of the reports:-

> ***"20. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Informant Report till the submission of the report by the officer in***

charge of police station in Court under section 173(2) of Criminal Procedure Code, this field being exclusively reserved for the investigation agency."

This being the settled legal position, the High Court ought not to have interfered with and quashed the entire proceedings in exercise of power conferred by section 482 of Criminal Procedure Code when the matter was still at the investigation stage.

9. As held by the Hon'ble Supreme Court in the case of **T. Vengama Naidu V. T. Dora Swamy Naidu and Ors reported in 2007 AIR SC 4266**, it is not proper for the Court at the stage of the investigation to examine the nature of the transactions and further to examine as to whether any offence was actually committed by the accused persons or not. At that stage, the only inquiry which could have been made was as to whether the complaint or the FIR did contain allegations of any offence. Whether those offences were made out, even prima facie could not have been examined at that stage as the investigation was pending then.

10. So far as the allegations of mala fides and the allegations made against the State Home Minister, at the outset, it is required to be noted that the concerned Minister against whom the allegations are made and that further allegations of mala fides are made is not a

party to the present proceedings. As held by the Hon'ble Supreme Court in the case of **Parkash Singh Badal and another V. State of Punjab and others reported in (2007) 1 SCC 1**, a plea of mala fides has not only to be clearly pleaded but specifically proved by adducing cogent evidence. Mere allegations and suspicions would not be sufficient. In the present case, the person against whom mala fide conduct is attributed is interestingly not a party in the proceedings. Under the circumstances, the impugned complaint/FIR on the basis of allegations of mala fides is not required to be quashed and set aside.

11. It is to be noted that the complaint/FIR is at the investigation stage and it is alleged in the affidavit-in-reply that the petitioner is not cooperating in the investigation i.e. he has not made himself available for investigation. It also cannot be disputed that under the Criminal Procedure Code, the police is authorized to investigate the crime and the offence and it is the statutory duty of the police to investigate the case/crime. The investigating agency should not be restrained from investigating the crime by quashing and setting aside the FIR at the threshold and thereby to restrain the officer from further investigating the case and to stall the investigation. In the facts and circumstances

of the case and looking to the averments and allegations in the complaint, it cannot be said that the allegations and averments in the complaint are so vexatious and/or they do not make out any prima facie case for further investigation. In the facts and circumstances of the case, the impugned complaint is not required to be quashed and set aside at the threshold and stall the investigation in exercise of powers u/s 482 of Criminal Procedure Code. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, the prayer of the petitioner to quash the FIR at this stage i.e. at the stage of investigation cannot be granted.

12. For the aforementioned reasons, the petition fails and dismissed accordingly. Notice discharged. Ad interim relief, if any granted earlier stands vacated forthwith.

(M.R. Shah, J.)

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